

### REMARKS

The Office Action of February 26, 2002 ("the Office Action") has been carefully considered. In the Office Action, claims 1-48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McGill, III et al., U.S. Patent No. 5,469,573, (hereinafter McGill) in view of Hugard et al., U.S. Patent 5,745,669, (hereafter Hugard). By the present amendment, claims 1, 25 and 34 have been amended and the rejections traversed in view of the following remarks. Reconsideration is respectfully requested.

After reviewing the Office action, applicants submit that the Office Action has not established a *prima facie* case of obviousness as a matter of law, and that the claims as filed and pending are clearly patentable over the prior art of record. Further, as discussed below, the Office action has not addressed much of the plain claim language, and thus has failed to meet the requirements of a proper obviousness rejection as a matter of law. Accordingly, applicants strongly disagree with the rejections, and with the way in which the claims were interpreted with respect to the prior art. Applicants submit that given each claim its broadest reasonable interpretation consistent with the specification, the claimed subject matter is clearly not disclosed or even suggested by McGill and/or Hugard, or any other prior art of record. Notwithstanding, applicants have amended independent claim 1, 25 and 34 for clarification purposes.

By way of background, the present invention defines a system recovery framework for backup and restore that provides an extensibility mechanism, such as for third-party vendors to integrate into backup and restore programs. The framework defines a common process,

environment, syntax and data structures, with which backup programs integrate by collecting and writing appropriate information to be used during system recovery in a defined format for use by a system recovery process. One such defined format is a system information file comprising a text file that specifies the hard disk state of the system and the location of key partitions where key components of the operating system are located. The system information file may include instructions for specifying programs to launch during the restore phase, and any commands that need to be run in error handling cases. The file may also include or reference any additional drivers or files to copy to assist in the restore process.

A framework for restoring is also provided, and includes reading the system information file to restore the disk partition state, creating a common environment, and configuring the common environment. When the environment is configured, the programs specified in the system information file are run to restore the remainder of the system.

Note that the above description is for informational purposes only, and should not be used to interpret the claims, which are discussed below.

In contrast to the claimed invention, neither McGill nor Hugard deal with the concept of automated system recovery via backup and/or restoration of system state information, let alone in the manner recited in the claims. As defined in the specification and reiterated above, system state information essentially comprises an underlying description of the system, including data separate from the actual operating system and data files, i.e., the information that intrinsically defines the configuration of a computer system. In fact, the Office action recognizes this deficiency, in conceding that "McGill does not explicitly teach system state

In re Application of CABRERA et al.  
Serial No. 09/361,641

information and registry state.” See e.g., Office action, page 4. At the same time, the “computer configuration data” in Hugard to which the Office action refers (at page 4 thereof) clearly does not disclose or suggest the recited state information, since these types of files that are to be restored (e.g., \*.INI, \*.DRV, \*.SYS, \*.COM, \*.EXE) in Hugard are conventional data file types, that can only be restored to an already-configured storage mechanism of a system. Like McGill, nowhere does Hugard teach or suggest interpreting saved state data that can configure a system upon restore, let alone configure a hard disk drive or storage mechanism to receive data files, for example. Note that the disk configuration referred to in McGill (partitioning /formatting) is manual, based on operator decisions, and is not performed via saved state information.

Moreover, neither McGill nor Hugard deal with the concept of writing/reading system state information to/from a medium in a *defined format* (e.g., independent claims 1, 25, 34 and/or 44) or the structure of data sets recited in claim 20. Significantly, the Office action has completely failed to address the recited “defined format” limitation in the independent claims, or the recited data sets in the data structure of claim 20. In fact, McGill and Hugard merely teach saving and restoring various file types. This does not in any way teach or suggest saving state information in any particular format, let alone the defined format and/or structure as recited in the claims. The Office action has apparently overlooked this aspect of the claim.

In sum, in the prior art of record there simply is no teaching of any system state information that is saved and/or interpreted to automatically configure an underlying system, including a storage mechanism on that system. Moreover, there is no teaching or suggestion

In re Application of CABRERA et al.  
Serial No. 09/361,641

of a defined format for writing out such system state information, and the Office action is silent as to this claim limitation. By law, however, to establish a prima facie case of obviousness, the prior art references must teach or suggest all the claim limitations, and all words in a claim must be considered in judging the patentability of that claim against the prior art. MPEP § 2142; In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Clearly neither McGill nor Hugard, whether considered alone or in any permissible combination, comes close to meeting these requirements, as neither reference considers the preservation and/or later use of system state information saved in a defined format as recited in the claims.

For at least the foregoing reasons, the prior art of record, whether considered alone or in any permissible combination, fails to disclose or suggest any of the claims. Reconsideration and withdrawal of the rejections of claims 1-48 is respectfully requested.

Moreover, applicants note that much of the alleged motivation in the Office action for combining McGill with Hugard is directed to restoration of files, not a storage mechanism, and further appears to come from applicants' teachings. For example, error handling, high reliability and flexibility, improved performance, reduction in errors and so forth are significant improvements taught by applicants, not by the prior art. Indeed, considering the § 103(a) rejection as a whole, it is evident that the references could only have been selected and combined to reject the claims by using the impermissible hindsight knowledge learned from applicant's teachings. For example, to make up for the deficiencies in McGill, it appears that the Office Action selected Hugard for its use of the term "configuration," even though the

In re Application of CABRERA et al.  
Serial No. 09/361,641

“configuration data” of Hugard referred to in the Office action is a set of conventional files, which are not used to configure a system, but only to restore data to an already configured storage mechanism. Clearly applicants’ teachings were used in an (unsuccessful) attempt to combine the references and piece together applicants’ claimed invention.

Such a hindsight reconstruction based on applicants’ teachings is impermissible by law, as in order to support a § 103(a) rejection, there must be some teaching, suggestion, or motivation other than applicants’ teachings for modifying a cited reference or combining references to achieve the claimed invention. The Office Action does not indicate any suggestion or motivation in the prior art of record, either explicit or otherwise, for modifying the references or combining the references in a manner that would achieve the claimed invention, or point out any teaching as to how such a modification or combination might be accomplished, or what might be accomplished thereby.

For at least the foregoing reasons, applicants submit that the § 103(a) rejections are improper as a matter of law, and reiterate that even if somehow permissible to combine with McGill with Hugard, the claims of the present invention are still patentable over any such combination. Reconsideration and withdrawal of the rejections is respectfully requested.

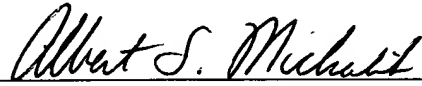
### CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that claims 1-48 of the present application are patentable over the prior art of record, and that the application is in good and proper form for allowance. A favorable action on the part of the Examiner is

In re Application of CABRERA. et al.  
Serial No. 09/361,641

earnestly solicited. If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney at (425) 836-3030.

Respectfully submitted,

A handwritten signature in cursive script, reading "Albert S. Michalik", is written over a horizontal line.

Albert S. Michalik, Reg. No. 37,395  
Attorney for Applicant  
Law Offices of Albert S. Michalik, PLLC  
704 - 228th Avenue NE  
Suite 193  
Sammamish, WA 98074  
(425) 836-3030 (telephone)  
(425) 836-8957 (facsimile)